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Attorneys for Defendants
TIMOTHY K. MONTGOMERY, WILLIAM J. TAMBLYN,
GREGORY M. AVIS, WILLIAM A. HASLER, ANDREI M.
MANOLIU, and DITECH NETWORKS, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In re DITECH NETWORKS, INC.
DERIVATIVE LITIGATION

This Document Relates To: All Actions

Case No. C 06-05157 JF

**STIPULATION AND
[PROPOSED] ORDER
(1) RELATING AND
CONSOLIDATING RELATED
ACTIONS, (2) APPOINTING CO-
LEAD PLAINTIFF AND CO-
LEAD PLAINTIFFS' COUNSEL,
AND (3) RE-SETTING CASE
MANAGEMENT CONFERENCE**

WHEREAS two actions were filed in this Court, *Donald W. Newman, Derivatively on
Behalf of Nominal Defendant Ditech Networks, Inc. v. Timothy K. Montgomery, et al.* (Case No.
C 06-05157 JF) ("*Newman*") and *James McKenna, Derivatively on Behalf of Nominal Defendant
Ditech Networks, Inc. v. Timothy K. Montgomery, et al.* (Case No. C 06-05242 JF) ("*McKenna*"),

1 which purport to be derivative actions brought on behalf of Ditech Networks, Inc. (“Ditech”)
2 against various individuals alleging that those defendants engaged in the improper backdating of
3 certain stock option grants during the period 1999 through 2001; and

4 WHEREAS the *Newman* and *McKenna* actions already have been (i) related pursuant to
5 this Court’s orders entered October 2, 2006 in those actions, and (ii) consolidated as *In re Ditech*
6 *Networks, Inc. Derivative Litigation* (Case No. C 06-05157 JF), pursuant to this Court’s order
7 entered November 7, 2006, a copy of which is attached hereto as Exhibit A (“Consolidation
8 Order”); and

9 WHEREAS the Consolidation Order provides that “[a]ny other actions now pending or
10 later filed in this Court which arise out of or are related to the same facts as alleged in [*Newman*
11 and *McKenna*] shall be consolidated for all purposes, if and when they are brought to the Court’s
12 attention” (Exh. A at ¶ 2); and

13 WHEREAS a new action, entitled *Kenneth Lau, Derivatively on Behalf of Ditech*
14 *Networks, Inc. v. Timothy K. Montgomery, et al.* (Case No. C 06-6877 PVT) (“*Lau*”), has been
15 filed in this Court; and

16 WHEREAS the *Lau* complaint also purports to be brought derivatively on behalf of
17 Ditech, against many of the same defendants as the *Newman* and *McKenna* cases, and seeks relief
18 on behalf of the company arising out of alleged improper backdating of stock option grants since
19 1999; and

20 WHEREAS *Lau* arises out of or is related to the same facts as *Newman* and *McKenna* (see
21 Exh. A at ¶ 2), the actions concern substantially the same parties, property, transaction or event,
22 and it appears likely that there will be an unduly burdensome duplication of labor and expense if
23 the cases are conducted before different judges (see Civil L. R. 3-12(a)); and

24 WHEREAS Lerach Coughlin Stoia Geller Rudman & Robbins, Counsel for plaintiff
25 Kenneth Lau, and Schiffrin & Barroway, Counsel for plaintiffs Donald W. Newman and James
26 McKenna, have agreed to a structure by which Lau, Newman and McKenna will be Lead
27 Plaintiffs, with their counsel Lerach Coughlin and Schiffrin & Barroway serving as Co-Lead
28 Counsel in this action; and

1 WHEREAS nominal defendant Ditech Networks, Inc. takes no position as to the
2 appointment of Kenneth Lau, Donald W. Newman and James McKenna as Lead Plaintiffs and
3 Lerach Coughlin Stoia Geller Rudman & Robbins LLP and Schiffrin & Barroway, LLP as Co-
4 Lead Counsel; and

5 WHEREAS a case management conference date set in one of the two originally
6 consolidated actions was vacated, but a case management conference set for December 1, 2006 in
7 the other action was not vacated; and

8 WHEREAS the Consolidation Order provides for the filing of a Consolidated Complaint
9 by December 22, 2006, with a response to the Consolidated Complaint due 45 days after the
10 service of the Consolidated Complaint, and sets out a briefing schedule for any motion to dismiss
11 (*see* Exh. A at ¶¶ 16-19); and

12 WHEREAS the parties believe it would serve the interests of judicial efficiency and
13 effective case management to conduct the case management conference after the *Lau* action has
14 been consolidated in this proceeding,

15 NOW, THEREFORE, IT IS HEREBY STIPULATED by and among plaintiff Donald W.
16 Newman, plaintiff James McKenna, plaintiff Kenneth Lau, and defendant Ditech, through their
17 respective counsel of record, as follows:

18 1. The *Lau* action should be related to and consolidated for all purposes with *In re*
19 *Ditech Networks, Inc. Derivative Litigation*, Case No. C 06-05157 JF, pursuant to the Court's
20 Consolidation Order, and all pleadings in *Lau* shall be filed in conformity with the Court's
21 Consolidation Order.

22 2. A Consolidated Complaint including the *Newman*, *McKenna* and *Lau* claims,
23 which will supersede all existing complaints, including the *Lau* complaint, shall be filed and
24 served no later than December 22, 2006.

25 3. The case management conference previously set in one of the consolidated actions
26 for December 1, 2006 at 10:30 a.m. should be re-set in the consolidated actions for February 23,
27 2007 at 10:30 a.m., in the Courtroom of the Honorable Jeremy Fogel.

1 Dated: November 28, 2006

SCHIFFRIN & BARROWAY LLP
ERIC L. ZAGAR
SANDRA G. SMITH

3 Proposed Co-Lead Counsel for Plaintiffs

4 - and -

5 BRAMSON, PLUTZIK, MAHLER &
6 BIRKHAUSER, LLP
7 ALAN R. PLUTZIK
L. TIMOTHY FISHER
KATHRYN A. SCHOFIELD

8 Counsel for Plaintiffs Donald W. Newman
9 and James McKenna

10 By _____ s/ Sandra G. Smith

12 Dated: November 28, 2006

13 LERACH COUGHLIN STOIA GELLER
14 RUDMAN & ROBBINS LLP
15 WILLIAMS S. LERACH
DARREN J. ROBBINS
TRAVIS E. DOWNS III
SHAWN A. WILLIAMS

16 Proposed Co-Lead Counsel for Plaintiffs

17 - and -

18 SHUMAN & BERENS LLP
KIP B. SHUMAN

19 Counsel for Plaintiff Kenneth Lau

20
21 By _____ s/ Aelish Baig

1 Dated: November 28, 2006

MORRISON & FOERSTER LLP
DARRYL P. RAINS
DIANE E. PRITCHARD

2
3
4 By s/ Diane E. Pritchard
5 Diane E. Pritchard
6 Counsel for Defendants DITECH
7 NETWORKS, INC., TIMOTHY K.
8 MONTGOMERY, WILLIAM J.
9 TAMBLYN, GREGORY M. AVIS,
10 WILLIAM A. HASLER, and ANDREI M.
11 MANOLIU
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1 I, Diane E. Pritchard, am the ECF User whose ID and password are being used to file this
2 Stipulation and [Proposed] Order (1) Relating and Consolidating Related Actions, (2) Appointing
3 Co-Lead Plaintiff and Co-Lead Plaintiffs' Counsel, and (3) Re-Setting Case Management
4 Conference. In compliance with General Order 45, X.B., I hereby attest that Sandra G. Smith and
5 Aelish Baig, attorneys for plaintiffs, have concurred in this filing.
6


7
8 Dated: November 28, 2006

MORRISON & FOERSTER LLP
DARRYL P. RAINS
DIANE E. PRITCHARD

11 By s/ Diane E. Pritchard
12 Diane E. Pritchard
13 Counsel for Defendants DITECH
14 NETWORKS, INC., TIMOTHY K.
15 MONTGOMERY, WILLIAM J.
16 TAMBLYN, GREGORY M. AVIS,
17 WILLIAM A. HASLER, and ANDREI M.
18 MANOLIU

19 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

20 Dated: 11/28/06

21 
22 Honorable Jeremy Fogel
23 United States District Judge
24
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